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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,328	04/23/2001	Graig William Sorensen	550,632	5990

27201 7590 11/28/2006

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EXAMINER

AU, GARY

ART UNIT	PAPER NUMBER
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2617

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/841,328

Applicant(s)

SORENSEN, GRAIG WILLIAM

Examiner

Gary Au

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 9/11/2006 have been fully considered but they are not persuasive.

The argument about storing the current state of the terminals from page 9 lines 18-32 of REMARK was addressed in the last office action by the Official Notice. Here is the MPEG 2144.03 paragraph C.

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate.

In light of the above, the Official Notice that it is well known in the art to track or record the current state of a terminal is taken to be admitted prior art.

2. Applicant's arguments with respect to claims 12 and 13 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 13 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims "An electronic storage media, readable by a single computer, which stores a program that directs said single computer to perform a method" embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized"). The examiner suggests amending the claim to embody the program on "computer-readable medium" or equivalent in order to make the claim statutory. Any amendment to the claim should be commensurate with its corresponding disclosure.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,449,739 (Landan) and further in view of US Patent No. 6,449,653 Klemets et al. (Klemets) and US. Patent No. 5,812,780 Chen et al. (Chen).

Considering claims 12 and 13, Landan teaches an electronic storage media, readable by a single computer, which stores a program that directs said single computer to perform a method of testing a system (transactional server 30 – figure 1, col. 5 lines 2-11), said method including the steps of: displaying, on a visual monitor connected to said single computer (controller 34 – figure 1, col. 5 lines 40-44), 1) a pointer for selecting any one particular simulated control terminal (figure 5 and 7, col. 10 lines 1-6 and 57-67), 2) the report of selected simulated control terminal (col. 5 lines 52 – col. 6 line 5), and 3) a set of control buttons for selecting one of several commands (figure 5 and 7, col. 10 lines 1-6 and 57-67); changing the simulated control terminal which is selected in response to an operator of said single computer clicking a mouse while placing a cursor on said pointer (col. 6 lines 3-20); generating an output signal from said single computer to said video server, inherently teaches as an immediate response to said operator clicking said mouse while placing said cursor on any particular one of said control buttons, which represents said one particular control button and identifies said selected simulated control terminal (col. 6 lines 3-20, where Landan discloses selecting a terminal and it is understood that the selection is sent to the server immediately after the terminal is chosen); updating information of said selected simulated control terminal (col. 5 lines 58-64); and repeating said changing, generating, and updating each output signal is sent in a sequence in which each output signal is sent in a sequence in which each output signal is preceded by a display of the current state of the selected simulated control terminal and the choosing of the next state by said operator (figure 7, where the whole process can be stopped and repeated by the user). However, Landan

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does not teach the server is a video server, the system is a video-on-demand system, and the commands are VCR-like.

In an analogous art, Klemets teaches a video-on-demand system with a video server having VCR-like commands (VCR-like commands – figure 2 and 6, col. 4 lines 36-54, col. 9 lines 8-17), for the benefit of receiving user requested video over which the user has the full control of playback.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the method disclosed by Landan to include the server is a video server, the system is a video-on-demand system, and the commands are VCR-like commands, as taught by Klemets, for the advantage of receiving user requested video over which the user has the full control of playback such as pause, rewind, and fast forward. However, the combined system of Landan and Klemets do not teach storing, in a single computer, respective current states for each of several control terminals.

In an analogous art, Chen teaches storing, in a single computer, information for each of several control terminals (simulated client 40 – figure 3B, col. 8 lines 51-65).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combined system of Landan and Klemets to include storing, in a single computer, information for each of several control terminals for said video server, as taught by Chen, for the advantage of simulating the behavior of multiple users operating client software (Chen, col. 1 lines 8-15).

However, the combined system of Landan, Klemets and Chen fails to disclose the current state of the control terminals.

The Examiner takes that it is well known in the art to track or record the current state of a terminal to be admitted prior art.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combined system of Landan, Klemets and Chen to include tracking the current state of a simulated terminal because it is a typical procedure in testing to record all data points for statistical analysis, troubleshooting and correcting errors.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Au whose telephone number is (571) 272-2822.

The examiner can normally be reached on 8am-5pm Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GA


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